

1 John C. Wynne (Bar No. 83041)  
 2 Elizabeth Burke Vann (Bar No. 249252)  
**2 DUCKOR SPRADLING METZGER & WYNNE**  
 3 A Law Corporation  
 3043 4<sup>th</sup> Avenue  
 4 San Diego, California 92103  
 4 (619) 209-3000; (619) 209-3043 fax

5 Attorneys for Defendants S.A. THOMPSON, INC., a  
 6 California corporation dba ROTO-ROOTER SEWER  
 & DRAIN CLEANING SERVICE; STANLEY A.  
 THOMPSON; and LINDA A. BLACK

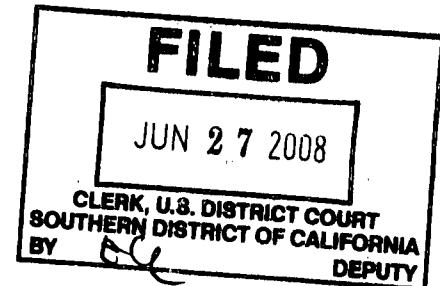
7  
 8  
 9  
 10 BRIAN KING; PATRICK SOVACOOL;  
 11 and REX MAXWELL, individually, and as  
 12 private attorney generals in the interests of  
 the general public,

13 Plaintiffs,

14 v.

15 S.A. THOMPSON, INC., a California  
 16 corporation D.B.A. ROTO-ROOTER  
 17 SEWER & DRAIN CLEANING  
 SERVICE; STANLEY A. THOMPSON;  
 LINDA A. BLACK; and DOE 1 through  
 DOE 10, inclusive,

18 Defendants.



19  
 20 CASE NO. **08 CV 1164 L AJB**  
 21 NOTICE OF REMOVAL UNDER 28 U.S.C.  
 22 § 1441(b) (FEDERAL QUESTION)

23 Judge:  
 24 Trial Date: None set

25 TO: THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT  
 26 OF CALIFORNIA

27 Come now Defendants, S.A. THOMPSON, INC., a California corporation D.B.A. ROTO  
 28 ROOTER SEWER & DRAIN CLEANING SERVICE, STANLEY A. THOMPSON, and LINDA  
 A. BLACK, by and through their undersigned counsel of record, and hereby give Notice of  
 Removal of the civil action entitled *Brian King, et al., v. S.A. Thompson, Inc., et al.*, Case No. 37-  
 2008-00054093-CU-OE-NC ("the Lawsuit"), from the Superior Court of the State of California,  
 in and for the County of San Diego, North County Division, to the United States District Court  
 for the Southern District of California. In support thereof, Defendants respectfully state to this

1 honorable Court as follows:

2       1. On or about May 7, 2008, Plaintiffs filed the original Complaint initiating this  
 3 Lawsuit. A copy of the original Complaint is attached hereto as **Exhibit A**.

4       2. The original Complaint consisted of three state law causes of action alleging  
 5 violations of unfair competition under the Business & Professions Code, violations of the Labor  
 6 Code, and violations of public policy. *See Exhibit A.*

7       3. Plaintiffs' original Complaint was not removable inasmuch as it only alleged  
 8 violations of state law and the parties were not diverse.

9       4. On or about May 30, 2008, Plaintiffs filed their First Amended Complaint. A  
 10 copy of the First Amended Complaint is attached hereto as **Exhibit B**.

11       5. Prior to filing the First Amended Complaint, counsel for Plaintiffs inquired as to  
 12 whether counsel for Defendants had the authority to receive service on behalf of Defendants, and  
 13 counsel for Defendants represented that they did have such authority. A copy of the Amended  
 14 Complaint was received at defense counsel's office on June 10, 2008, but no Notice and  
 15 Acknowledgment of Service form was served with it. Counsel for Plaintiffs maintain that the  
 16 California Rules of Civil Procedure do not require a Notice and Acknowledgement of Service  
 17 form to be served and signed in this instance, and thus, contend that service of the First Amended  
 18 Complaint was effectuated on June 10, 2008. Counsel for Defendants maintain that the  
 19 California Rules of Civil Procedure do require a Notice and Acknowledgement of Service form to  
 20 be served and signed, and thus contend that service of the First Amended Complaint was not  
 21 effectuated until June 24, 2008, the date on which counsel for Defendants provided written notice  
 22 to Plaintiffs' counsel that they were accepting service. *See Declaration of Elizabeth Vann*  
 23 attached hereto as **Exhibit C**.

24       6. Plaintiffs' First Amended Complaint consists of four causes of action which  
 25 include the three causes previously included in the original Complaint as well as a claim that  
 26 Defendants violated the Fair Labor Standards Act of 1938, Title 29, Chapter 8, Section 207 of the  
 27 United States Code.

28       7. Plaintiffs' First Amended Complaint is the first document from which it may be

1 ascertained that the Lawsuit is removable.

2       8. In accordance with 28 U.S.C. § 1446(b), whether service of the First Amended  
 3 Complaint is deemed to have been effectuated on June 10, 2008, as claimed by Plaintiffs, or on  
 4 June 24, 2008, as claimed by Defendants, this Lawsuit is removable because this Notice of  
 5 Removal is filed within thirty days of receipt by Defendants of an amended pleading from which  
 6 it could first be ascertained that the Lawsuit is one which could be removed under 28 U.S.C.  
 7 § 1332.

8       9. In addition, this Notice of Removal is being filed less than one year after  
 9 commencement of the Lawsuit.

10     10. Defendants' Notice of Removal is accompanied by written notice to Plaintiffs and  
 11 a copy of Defendants' Notice of Removal is being filed with the Clerk of the Superior Court of  
 12 the State of California, in and for the County of San Diego, North County Division, on this date  
 13 as required by 28 U.S.C. § 1446(d).

14     11. No other defendant has been served with the summons and complaint and thus  
 15 there is no other defendant party to join in this Notice of Removal.

16           WHEREFORE, Defendants S.A. Thompson, Inc., Stanley A. Thompson, and Linda A.  
 17 Black provide Notice of Removal of the above-captioned action pending in the Superior Court of  
 18 the State of California, in and for the County of San Diego, North County Division, to the United  
 19 States District Court for the Southern District of California.

20 DATED: June 27<sup>th</sup>, 2008

21           DUCKOR SPRADLING METZGER & WYNNE  
 22           A Law Corporation

23 By:

24           JOHN C. WYNNE  
 25           ELIZABETH BURKE VANN  
 26           Attorneys for Defendants,  
 27           S.A. THOMPSON, INC., a California  
 28           corporation dba ROTO-ROOTER SEWER &  
                  DRAIN CLEANING SERVICE; STANLEY A.  
                  THOMPSON; and LINDA A. BLACK

John C. Wynne, Esq. (SBN 83041)  
 Elizabeth B. Vann (SBN 249252)  
 DUCKOR SPRADLING METZGER & WYNNE  
 3043 4<sup>th</sup> Avenue  
 San Diego, CA 92103  
 (619) 209-3000

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

<p>BRIAN KING; PATRICK SOVACOOL; and REX MAXWELL, individually, and as private attorney generals in the interest of the general public,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>S.A. THOMPSON, INC., a California corporation d.b.a. ROTO-ROOTER SEWER &amp; DRAIN CLEANING SERVICE; STANLEY A. THOMPSON; LINDA A. BLACK; and DOE 1 through DOE 10, inclusive,</p> <p style="text-align: center;">Defendants.</p>	<p>No.: _____</p> <p><b>DECLARATION OF SERVICE</b></p> <p>Person Served:</p> <p><u>Attorney for Plaintiff:</u>            Matthew P. Tyson, Esq.            Zachary T. Tyson, Esq.            TYSON &amp; TYSON, LLP            2550 Fifth Ave., 9<sup>th</sup> Floor            San Diego, CA 92103            Tel: (619) 720-8350            Fax: (619) 615-2173</p> <p>Date Served: June 27, 2008</p>
---	--

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above-named person the following documents:

**NOTICE OF REMOVAL UNDER 28 U.S.C. SECTION 1441(b) (FEDERAL QUESTION)**

in the following manner:

check one)

- 1)  By personally delivering copies to the person served.
- 2)  By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid), copies to the person served at the place where the copies were left.
- 3)  By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at San Diego, California, on June 27, 2008.
- 4)  By fax transmission, I faxed the documents to the person at the fax number listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2008, at San Diego, California.



Dawna Kirby



1 MATTHEW P. TYSON (#178427) ....  
2 ZACHARY T. TYSON (#211185)  
3 TYSON & TYSON, LLP  
4 2550 Fifth Avenue, 9th Floor  
5 San Diego, California 92103  
6 Phone: (619) 720-8350  
7 Fax: (619) 615-2173

2008 MAY -7 PM 12:11

COURT OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

FILE STAMP  
CANCELLED

5 Attorneys for BRIAN KING,  
6 PATRICK SOVACOOL, and REX MAXWELL

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

10 BRIAN KING; PATRICK SOVACOOL; and  
11 RESEX MAXWELL, individually, and as private  
12 attorney generals in the interests of the  
13 general public,

Case No. 37-2008-00054093-CU-OE-NC

Plaintiffs,

14 v.  
15 S. A. THOMPSON, INC., a California  
16 corporation D. B. A. ROTO-ROOTER SEWER  
& DRAIN CLEANING SERVICE; and DOE 1  
through DOE 10, inclusive,

BRIAN KING, PATRICK SOVACOOL, AND  
RESEX MAXWELL'S COMPLAINT AGAINST S. A.  
THOMPSON, INC., D. B. A. ROTO-ROOTER  
SEWER & DRAIN CLEANING SERVICE, FOR:

1. UNFAIR COMPETITION;
2. VIOLATION OF LABOR CODE; AND
3. VIOLATION OF PUBLIC POLICY

[JURY TRIAL DEMANDED]

17 Defendants.

18  
19 BRIAN KING, PATRICK SOVACOOL, and REX MAXWELL allege:

20 PARTIES, JURISDICTION, AND VENUE

- 21 1. Each Plaintiff is an individual residing in San Diego County.
- 22 2. On information and belief, S. A. THOMPSON, INC. is a California corporation with its  
23 headquarters in San Diego County and doing business as ROTO-ROOTER SEWER & DRAIN  
24 CLEANING SERVICE in San Diego County.

1           3. The true names and capacities of DOE 1 through DOE 10 are unknown, and Plaintiffs  
2 will seek leave to amend this complaint to set forth the true names and capacities thereof when they  
3 have been ascertained.

4           4. On information and belief, each of the fictitiously named DOE defendants is  
5 responsible for, or has contributed to, the matters giving rise to the relief sought herein.

6       5. Plaintiffs seek an award of damages in an amount exceeding twenty five thousand  
7 dollars (\$25,000).

**FIRST CAUSE OF ACTION  
BY ALL PLAINTIFFS AND AGAINST ALL DEFENDANTS  
FOR UNFAIR COMPETITION**

6. Each Plaintiff was an employee of Defendants.

7. Defendants have violated and continue to violate Business & Professions Code, section 17200, et seq., by engaging in acts of unfair competition, including, but not limited to, the following:

a. Unlawfully withholding part of the pay owed to employees, including each Plaintiff, in violation of Labor Code sections 216, 221, and 223;

b. Failing to pay employees, including each Plaintiff, all wages earned and owing at the time of their separation from employment in violation of Labor Code sections 201, 202, and

c. Failing to maintain a designated wage scale as required by statute or contract for public works services performed by employees, including each Plaintiff, pursuant to Labor Code section 223;

d. Failing to provide employees, including each Plaintiff, with an itemized written statement accurately reflecting gross wages earned, piece-rate earnings, the applicable piece rate, all deductions taken, net wage earned, in violation of Labor Code section 226:

1                   e.     Failing to indemnify employees, including each Plaintiff, for losses incurred in  
2 the course of the discharge of their duties;

3                   f.     Failing to provide employees, including each Plaintiff, with tools necessary to  
4 perform the work they were hired to perform in violation of Labor Code section 2802;

5                   g.     Retaliating against employees, including each Plaintiff, by reducing their pay  
6 as a result of employee complaints, including those made by PATRICK SOVACOOL, of Defendants  
7 unlawfully failing to provide tools necessary to perform the work they were hired to perform, and  
8 refusing to perform work under a real and apparent hazard, in violation of public policy and pursuant  
9 to Labor Code sections 221, 2802, 6310 and 6311.

10                  8.     Each Plaintiff has suffered, and continues to suffer, damages as a result of the  
11 conduct of Defendants.

12                  9.     Each Plaintiff is acting in its own interests, and as a private attorney general in the  
13 interests of the general public, and, as a result of unfair competition, Defendants have caused each  
14 Plaintiff to suffer injury in fact and lose money or property.

15                  10.    Defendants should be enjoined from committing acts of unfair competition.

16                  11.    Defendants should make full restitution to employees to restore all monies owing to  
17 employee but acquired or retained by Defendants as a result of unfair competition.

18                  12.    Defendants should be assessed a civil penalty of two thousand five hundred dollars  
19 (\$2,500) against Defendants for each act of unfair competition, a civil penalty of one hundred dollars  
20 (\$100) per initial violation, and two hundred dollars (\$200) per subsequent violation, for unlawfully  
21 withholding wages, and a civil penalty of fifty dollars (\$50) against Defendants for each act of failure to  
22 pay overtime wages, according to proof at trial.

23                  13.    Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid  
24 wages, interest, costs of suit, and attorney fees, against Defendants according to proof at trial.

**SECOND CAUSE OF ACTION  
BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS  
FOR VIOLATION OF LABOR CODE**

14. Plaintiff re-alleges paragraphs 6 through 8.

4       15. Defendants violated Labor Code sections 201, 202, 203, 216, 221, 223, 226, 2802,  
5 6310 and 6311.

6           16. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid  
7 wages, interest, costs of suit, and attorney fees, against Defendants according to proof at trial.

**THIRD CAUSE OF ACTION  
BY PATRICK SOVACOOL AGAINST ALL DEFENDANTS  
FOR VIOLATION OF PUBLIC POLICY**

17. Plaintiff re-alleges paragraphs 6 through 8.

1 18. The conduct of Defendants was outrageous, and intended to cause PATRICK  
2 SOVACOOL emotional distress.

19. PATRICK SOVACOOL suffered severe emotional distress

14           20. The conduct of Defendants was a substantial factor in causing PATRICK SOVACOOL  
15 to suffer severe emotional distress

21. Defendants acted with malice or oppression towards PATRICK SOVACOOL.

17           22. PATRICK SOVACOOL should be awarded compensatory damages, punitive and  
18 exemplary damages, costs of suit, and attorney fees, against Defendants according to proof at trial.

Respectfully submitted,

Dated: 5-7-08

TYSON & TYSON, LLP

By: Matthew P. Tyson  
MATTHEW P. TYSON  
ZACHARY T. TYSON

\* \* \* ERROR REPORT ( MAY. 12. 2008 1:21PM ) \* \* \*

FAX HEADER: DSM

FILE	PERSONAL NAME	ADDRESS	MODE	TIME	PAGE	RESULT
102		7607451337	G3RED	0'33"	P. 2	E
			PAGE NOT RECEIVED	QUICK SERVICE CODE		
			P. 2	00-01		

# : BATCH  
M : MEMORY TX  
S : STANDARD  
\* : PC

C : CONFIDENTIAL  
L : SEND LATER  
D : DETAIL  
+ : ROUTING

\$ : TRANSFER  
@ : FORWARDING  
F : FINE  
Q : RECEPT. NOTICE REQ.

P : POLLING  
E : ECM  
> : REDUCTION  
A : RECEPT. NOTICE



2008 MAY 30 PM 4:23  
 SAN DIEGO COUNTY COURT  
 SAN DIEGO, CALIFORNIA

1 MATTHEW P. TYSON (#178427)  
 2 ZACHARY T. TYSON (#211185)  
 3 TYSON & TYSON, LLP  
 4 2550 Fifth Avenue, 9th Floor  
 San Diego, California 92103  
 Phone: (619) 720-8350  
 Fax: (619) 615-2173

5 Attorneys for BRIAN KING,  
 PATRICK SOVACOOL, and REX MAXWELL  
 6

7  
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

10 BRIAN KING; PATRICK SOVACOOL; and  
 11 REX MAXWELL, individually, and as private  
 attorney generals in the interests of the  
 general public,

12 Plaintiffs,  
 13

v.

14 S. A. THOMPSON, INC., a California  
 corporation D. B. A. ROTO-ROOTER SEWER  
 & DRAIN CLEANING SERVICE; STANLEY A.  
 THOMPSON; LINDA A. BLACK; and DOE 1  
 through DOE 10, inclusive,

15 Defendants.  
 16

Case No. 37-2008-00054093-CU-OE-NC

Department N-28  
HON. MICHAEL B. ORFIELD

BRIAN KING, PATRICK SOVACOOL, AND  
REX MAXWELL'S FIRST AMENDED  
COMPLAINT AGAINST S. A. THOMPSON,  
INC., D. B. A. ROTO-ROOTER SEWER &  
DRAIN CLEANING SERVICE, STANLEY A.  
THOMPSON, AND LINDA A. BLACK, FOR:

1. UNFAIR COMPETITION;
2. VIOLATION OF LABOR CODE;
3. VIOLATION OF F.L.S.A.; AND
4. VIOLATION OF PUBLIC POLICY

[JURY TRIAL DEMANDED]

19  
 20  
 21 ///  
 22 ///  
 23 ///  
 24 ///

1 BRIAN KING, PATRICK SOVACOOL, and REX MAXWELL allege:

2 PARTIES, JURISDICTION, AND VENUE

- 3 1. Each Plaintiff is an individual residing in San Diego County.
- 4 2. S. A. THOMPSON, INC. is a California corporation with its headquarters in San Diego  
5 County and doing business as ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE in San  
6 Diego County.
- 7 3. STANLEY A. THOMPSON is an individual residing in San Diego County.
- 8 4. LINDA A. BLACK is an individual residing in San Diego County.
- 9 5. The true names and capacities of DOE 1 through DOE 10 are unknown, and Plaintiffs  
10 will seek leave to amend this complaint to set forth the true names and capacities thereof when they  
11 have been ascertained.

12 6. Each of the fictitiously named DOE defendants is responsible for, or has contributed  
13 to, the matters giving rise to the relief sought herein.

14 7. Plaintiffs seek an award of damages in an amount exceeding twenty five thousand  
15 dollars (\$25,000).

16 GENERAL ALLEGATIONS

17 8. Each Plaintiff was an employee of Defendants and performed work for Defendants.

18 9. Defendants willfully and unlawfully withheld part of the pay owed to employees,  
19 including each Plaintiff, including, but not limited to, overtime wages for work in excess of 8 hours in a  
20 day and/or 40 hours in a week.

21 10. Defendants were required, but failed, to pay employees, including each Plaintiff except  
22 BRIAN KING, all wages earned and owing at the time of their separation from employment.

23 11. Defendants were required, but failed, to maintain a designated wage scale as required  
24 by statute or contract for public works services performed by employees, including each Plaintiff.

1       12. Defendants failed to provide employees, including each Plaintiff, with an itemized  
2 written statement accurately reflecting gross wages earned, piece-rate earnings, the applicable piece  
3 rate, all deductions taken, and net wage earned.

4       13. Defendants were required, but failed, to indemnify employees, including each Plaintiff,  
5 for losses incurred in the course of the discharge of their duties.

6       14. Defendants were required, but failed, to provide employees, including each Plaintiff,  
7 with tools necessary to perform the work they were hired to perform.

8       15. Defendants paid employees, including each Plaintiff, less than the minimum wage for  
9 some hours worked.

10       16. Defendants retaliated against employees, including each Plaintiff, by reducing their  
11 pay as a result of employee complaints, including those made by PATRICK SOVACOOL, of  
12 Defendants unlawfully failing to provide tools necessary to perform the work they were hired to  
13 perform, and refusing to perform work under a real and apparent hazard.

14       17. Each Plaintiff has suffered, and continues to suffer, damages as a result of the  
15 conduct of Defendants.

16       18. Such a unity of interest and ownership existed between S. A. THOMPSON, INC. on  
17 the one hand, and STANLEY A. THOMPSON on the other hand, that the separateness of the  
18 corporation no longer existed, and if the conditional privilege of separate existence is recognized, and  
19 the acts alleged herein are deemed those of the corporation alone, an inequitable result will follow.  
20 Accordingly, STANLEY A. THOMPSON must be held liable as the alter ego of S. A. THOMPSON,  
21 INC.

22       19. Such a unity of interest and ownership existed between S. A. THOMPSON, INC. on  
23 the one hand, and LINDA A. BLACK on the other hand, that the separateness of the corporation no  
24 longer existed, and if the conditional privilege of separate existence is recognized, and the acts

alleged herein are deemed those of the corporation alone, an inequitable result will follow.

Accordingly, LINDA A. BLACK must be held liable as the alter ego of S. A. THOMPSON, INC.

**FIRST CAUSE OF ACTION  
BY ALL PLAINTIFFS AND AGAINST ALL DEFENDANTS  
FOR UNFAIR COMPETITION**

20. Plaintiffs re-allege paragraphs 6 through 19.

21. Defendants have violated and continue to violate Business & Professions Code, section 17200, et seq., by engaging in acts of unfair competition.

22. Each Plaintiff is acting in its own interests, and as a private attorney general in the interests of the general public, and, as a result of unfair competition, Defendants have caused each Plaintiff to suffer injury in fact and lose money or property.

23. Defendants should be enjoined from committing acts of unfair competition.

24. Defendants should make full restitution to employees to restore all monies owing to employee but acquired or retained by Defendants as a result of unfair competition.

25. Defendants should be assessed a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each act of unfair competition, a civil penalty of one hundred dollars (\$100) per initial violation, and two hundred dollars (\$200) per subsequent violation, for unlawfully withholding wages, and a civil penalty of fifty dollars (\$50) against Defendants for each act of failure to pay overtime wages, according to proof at trial.

26. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid wages, actual damages, interest, costs of suit, and attorney fees, against Defendants according to proof at trial.

22 | //

23 //

21 III

**SECOND CAUSE OF ACTION  
BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS  
FOR VIOLATION OF LABOR CODE**

27. Plaintiffs re-allege paragraphs 6 through 19.

28. Defendants violated Labor Code sections 201, 202, 203, 216, 218, 221, 223, 226,  
1174, 1174.5, 1175, 1194, 2802, 6310 and 6311.

29. Defendants should be assessed a civil penalty of five-hundred dollars (\$500) for failing to maintain accurate and complete records of hours worked by Plaintiffs.

30. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid wages, actual damages, interest, costs of suit, and attorney fees, against Defendants according to proof at trial.

31. Each Plaintiff, except BRIAN KING, is entitled to a civil penalty against Defendants in the form of a daily waiting-time penalty for nonpayment of wages at their daily wage rate at the time their employment ended and until paid in full.

**THIRD CAUSE OF ACTION  
BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS  
FOR VIOLATION OF F.L.S.A.**

32. Plaintiffs re-allege paragraphs 6 through 19.

33. Defendants violated the Fair Labor Standards Act of 1938, under Title 29, Chapter 8, Section 207 of the United States Code.

34. Each Plaintiff is entitled to an award in the amount of their unpaid minimum wages, and their unpaid overtime compensation, and in an additional equal amount as liquidated damages, as well as costs of suit and reasonable attorney's fees.

22 | //

23 | //

24 | 11

**FOURTH CAUSE OF ACTION  
BY PATRICK SOVACOOL AGAINST ALL DEFENDANTS  
FOR VIOLATION OF PUBLIC POLICY**

35. Plaintiffs re-allege paragraphs 6 through 19.

36. Defendants demoted employees, including PATRICK SOVACOOL.

37. The motivating reason that Defendants demoted employees, including PATRICK

6 SOVACOOL, was because PATRICK SOVACOOL complained that Defendants unlawfully failed to  
7 provide tools necessary to perform the work that he and others were hired to perform, and for refusing  
8 to perform work under a real and apparent hazard.

9       38. The conduct of Defendants was outrageous, and intended to cause PATRICK  
10 SOVACOOL emotional distress and economic harm.

39 PATRICK SOVACOOL suffered severe emotional distress and economic damages.

12       40. The conduct of Defendants caused PATRICK SOVACOOL to suffer severe emotional  
13 distress and economic damages.

41 Defendants acted with malice or oppression towards PATRICK SOVACOOL.

15       42. PATRICK SOVACOOL should be awarded compensatory damages, punitive and  
16 exemplary damages, costs of suit, and attorney fees, against Defendants according to proof at trial.

17 | Page

Respectfully submitted,

Dated: 5 - 30 - 08

TYSON & TYSON, LLP

By: Matt Tyson  
MATTHEW P. TYSON  
ZACHARY T. TYSON  
Attorneys for  
BRIAN KING  
PATRICK SOVACOOL  
REX MAXWELL



John C. Wynne (Bar No. 83041)  
Elizabeth Burke Vann (Bar No. 249252)  
**DUCKOR SPRADLING METZGER & WYNNE**  
A Law Corporation  
3043 4<sup>th</sup> Avenue  
San Diego, California 92103  
(619) 209-3000; (619) 209-3043 fax

Attorneys for Defendants S.A. THOMPSON, INC., a California corporation dba ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE; STANLEY A. THOMPSON; and LINDA A. BLACK.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN KING; PATRICK SOVACOOL;  
and REX MAXWELL, individually, and as  
private attorney generals in the interests of  
the general public.

CASE NO.:

**DECLARATION OF ELIZABETH B. VANN**

### **Plaintiffs.**

Action Filed:  
Trial Date: None set

S.A. THOMPSON, INC., a California corporation D.B.A. ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE; STANLEY A. THOMPSON; LINDA A. BLACK; and DOE 1 through DOE 10, inclusive.

## Defendants.

I, ELIZABETH B. VANN, declare:

1. I am an associate attorney with the law firm of Duckor Spradling Metzger & Wynne, attorneys of record for Defendants in the above-captioned matter. I have personal knowledge of the facts set forth in this declaration. I make this declaration of my own personal knowledge, and if called as a witness, I could and would testify competently to the matters set forth herein. I offer the following declaration testimony in support of Defendants' Notice of Removal.

2. Prior to filing the First Amended Complaint, counsel for Plaintiffs inquired as to whether counsel for Defendants had the authority to receive service on behalf of Defendants, and

I represented that we did have such authority.

3. A copy of the Amended Complaint was received by my office on June 10, 2008, but no Notice and Acknowledgment of Service form was served with it.

4. I have represented to counsel for Plaintiffs that even though we have the authority to accept service on behalf of Defendants, we maintain that the California Rules of Civil Procedure do require a Notice and Acknowledgement of Service form to be served with the First Amended Complaint and signed by us in order to effectuate service. Accordingly, I have further represented to counsel for Plaintiffs that we contend that service of the First Amended Complaint was not effectuated until June 24, 2008, the date on which we provided written notice to Plaintiffs' counsel that we were, in fact, accepting service as of that date.

5. Counsel for Plaintiffs maintain that the California Rules of Civil Procedure do not require a Notice and Acknowledgement of Service form to be served and signed in this instance, and thus, contend that service of the First Amended Complaint was effectuated on June 10, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of June, 2008 at San Diego, California.

Elizabeth Vann  
ELIZABETH B. VANN

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 152436 - TC  
\* \* C O P Y \* \*  
June 30, 2008  
16:44:04**

**Civ Fil Non-Pris**  
USAO #: 08CV1164  
Judge.: M. JAMES LORENZ  
Amount.: \$350.00 CK  
Check#: BC20880

**Total-> \$350.00**

**FROM: BRIAN KING ET AL  
VS  
S. A. THOMPSON DBA ROTO ROOTER**

SJS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court in the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

## I. (a) PLAINTIFFS

Brian King, Patrick Sovacool, and Rex Maxwell

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attys. Matthew & Zachary Tyson, TYSON & TYSON, LLP, 2550  
Fifth Ave., 9th Floor, San Diego, CA 92103; (619) 720-8350

## DEFENDANTS

S.A. Thompson, Inc., a CA Corp. dba Roto-Rooter Sewer &  
Drain Cleaning Service, Stanley A. Thompson, Linda A. Black  
County of Residence of First Listed Plaintiff SOUTHERN DISTRICT OF CALIFORNIA  
(IN U.S. PLAINTIFF CASES ONLY)

JUN 27 2008

CLERK, U.S. DISTRICT COURT

DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

108 CV 1164 L AJB

Attorneys (If Known)

John Wynne; Elizabeth Vann, Duckor Spradling Metzger &  
Wynne, 3043 4th Ave., San Diego, CA 92103; (619) 209-3000

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 420 Agriculture	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 422 Appeals 28 USC 158	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 424 Other Statute	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 425 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 426 Other Immigration Actions	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 427 Other Civil Rights	<input type="checkbox"/> 950 Constitutionality of State Statutes	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 428 Other Statute		
		<input type="checkbox"/> 430 Habeas Corpus: General		
		<input type="checkbox"/> 431 Death Penalty		
		<input type="checkbox"/> 432 Mandamus & Other		
		<input type="checkbox"/> 433 Civil Rights		
		<input type="checkbox"/> 434 Prison Condition		
		<input type="checkbox"/> 435 Other Civil Rights		
		<input type="checkbox"/> 436 Other Statute		
		<input type="checkbox"/> 437 Other Statute		
		<input type="checkbox"/> 438 Other Statute		
		<input type="checkbox"/> 439 Other Statute		
		<input type="checkbox"/> 440 Other Statute		
		<input type="checkbox"/> 441 Other Statute		
		<input type="checkbox"/> 442 Other Statute		
		<input type="checkbox"/> 443 Other Statute		
		<input type="checkbox"/> 444 Other Statute		
		<input type="checkbox"/> 445 Other Statute		
		<input type="checkbox"/> 446 Other Statute		
		<input type="checkbox"/> 447 Other Statute		
		<input type="checkbox"/> 448 Other Statute		
		<input type="checkbox"/> 449 Other Statute		
		<input type="checkbox"/> 450 Other Statute		
		<input type="checkbox"/> 451 Other Statute		
		<input type="checkbox"/> 452 Other Statute		
		<input type="checkbox"/> 453 Other Statute		
		<input type="checkbox"/> 454 Other Statute		
		<input type="checkbox"/> 455 Other Statute		
		<input type="checkbox"/> 456 Other Statute		
		<input type="checkbox"/> 457 Other Statute		
		<input type="checkbox"/> 458 Other Statute		
		<input type="checkbox"/> 459 Other Statute		
		<input type="checkbox"/> 460 Other Statute		
		<input type="checkbox"/> 461 Other Statute		
		<input type="checkbox"/> 462 Other Statute		
		<input type="checkbox"/> 463 Other Statute		
		<input type="checkbox"/> 464 Other Statute		
		<input type="checkbox"/> 465 Other Statute		
		<input type="checkbox"/> 466 Other Statute		
		<input type="checkbox"/> 467 Other Statute		
		<input type="checkbox"/> 468 Other Statute		
		<input type="checkbox"/> 469 Other Statute		
		<input type="checkbox"/> 470 Other Statute		
		<input type="checkbox"/> 471 Other Statute		
		<input type="checkbox"/> 472 Other Statute		
		<input type="checkbox"/> 473 Other Statute		
		<input type="checkbox"/> 474 Other Statute		
		<input type="checkbox"/> 475 Other Statute		
		<input type="checkbox"/> 476 Other Statute		
		<input type="checkbox"/> 477 Other Statute		
		<input type="checkbox"/> 478 Other Statute		
		<input type="checkbox"/> 479 Other Statute		
		<input type="checkbox"/> 480 Other Statute		
		<input type="checkbox"/> 481 Other Statute		
		<input type="checkbox"/> 482 Other Statute		
		<input type="checkbox"/> 483 Other Statute		
		<input type="checkbox"/> 484 Other Statute		
		<input type="checkbox"/> 485 Other Statute		
		<input type="checkbox"/> 486 Other Statute		
		<input type="checkbox"/> 487 Other Statute		
		<input type="checkbox"/> 488 Other Statute		
		<input type="checkbox"/> 489 Other Statute		
		<input type="checkbox"/> 490 Other Statute		
		<input type="checkbox"/> 491 Other Statute		
		<input type="checkbox"/> 492 Other Statute		
		<input type="checkbox"/> 493 Other Statute		
		<input type="checkbox"/> 494 Other Statute		
		<input type="checkbox"/> 495 Other Statute		
		<input type="checkbox"/> 496 Other Statute		
		<input type="checkbox"/> 497 Other Statute		
		<input type="checkbox"/> 498 Other Statute		
		<input type="checkbox"/> 499 Other Statute		
		<input type="checkbox"/> 500 Other Statute		
		<input type="checkbox"/> 501 Other Statute		
		<input type="checkbox"/> 502 Other Statute		
		<input type="checkbox"/> 503 Other Statute		
		<input type="checkbox"/> 504 Other Statute		
		<input type="checkbox"/> 505 Other Statute		
		<input type="checkbox"/> 506 Other Statute		
		<input type="checkbox"/> 507 Other Statute		
		<input type="checkbox"/> 508 Other Statute		
		<input type="checkbox"/> 509 Other Statute		
		<input type="checkbox"/> 510 Other Statute		
		<input type="checkbox"/> 511 Other Statute		
		<input type="checkbox"/> 512 Other Statute		
		<input type="checkbox"/> 513 Other Statute		
		<input type="checkbox"/> 514 Other Statute		
		<input type="checkbox"/> 515 Other Statute		
		<input type="checkbox"/> 516 Other Statute		
		<input type="checkbox"/> 517 Other Statute		
		<input type="checkbox"/> 518 Other Statute		
		<input type="checkbox"/> 519 Other Statute		
		<input type="checkbox"/> 520 Other Statute		
		<input type="checkbox"/> 521 Other Statute		
		<input type="checkbox"/> 522 Other Statute		
		<input type="checkbox"/> 523 Other Statute		
		<input type="checkbox"/> 524 Other Statute		
		<input type="checkbox"/> 525 Other Statute		
		<input type="checkbox"/> 526 Other Statute		
		<input type="checkbox"/> 527 Other Statute		
		<input type="checkbox"/> 528 Other Statute		
		<input type="checkbox"/> 529 Other Statute		
		<input type="checkbox"/> 530 Other Statute		
		<input type="checkbox"/> 531 Other Statute		
		<input type="checkbox"/> 532 Other Statute		
		<input type="checkbox"/> 533 Other Statute		
		<input type="checkbox"/> 534 Other Statute		
		<input type="checkbox"/> 535 Other Statute		
		<input type="checkbox"/> 536 Other Statute		
		<input type="checkbox"/> 537 Other Statute		
		<input type="checkbox"/> 538 Other Statute		
		<input type="checkbox"/> 539 Other Statute		
		<input type="checkbox"/> 540 Other Statute		
		<input type="checkbox"/> 541 Other Statute		
		<input type="checkbox"/> 542 Other Statute		
		<input type="checkbox"/> 543 Other Statute		
		<input type="checkbox"/> 544 Other Statute		
		<input type="checkbox"/> 545 Other Statute		
		<input type="checkbox"/> 546 Other Statute		
		<input type="checkbox"/> 547 Other Statute		
		<input type="checkbox"/> 548 Other Statute		
		<input type="checkbox"/> 549 Other Statute		
		<input type="checkbox"/> 550 Other Statute		
		<input type="checkbox"/> 551 Other Statute		
		<input type="checkbox"/> 552 Other Statute		
		<input type="checkbox"/> 553 Other Statute		
		<input type="checkbox"/> 554 Other Statute		
		<input type="checkbox"/> 555 Other Statute		
		<input type="checkbox"/> 556 Other Statute		
		<input type="checkbox"/> 557 Other Statute		
		<input type="checkbox"/> 558 Other Statute		
		<input type="checkbox"/> 559 Other Statute		
		<input type="checkbox"/> 560 Other Statute		
		<input type="checkbox"/> 561 Other Statute		
		<input type="checkbox"/> 562 Other Statute		
		<input type="checkbox"/> 563 Other Statute		
		<input type="checkbox"/> 564 Other Statute		
		<input type="checkbox"/> 565 Other Statute		
		<input type="checkbox"/> 566 Other Statute		
		<input type="checkbox"/> 567 Other Statute		
		<input type="checkbox"/> 568 Other Statute		
		<input type="checkbox"/> 569 Other Statute		
		<input type="checkbox"/> 570 Other Statute		
		<input type="checkbox"/> 571 Other Statute		
		<input type="checkbox"/> 572 Other Statute		
		<input type="checkbox"/> 573 Other Statute		
		<input type="checkbox"/> 574 Other Statute		
		<input type="checkbox"/> 575 Other Statute		
		<input type="checkbox"/> 576 Other Statute		
		<input type="checkbox"/> 577 Other Statute		
		<input type="checkbox"/> 578 Other Statute		
		<input type="checkbox"/> 579 Other Statute		
		<input type="checkbox"/> 580 Other Statute		
		<input type="checkbox"/> 581 Other Statute		
		<input type="checkbox"/> 582 Other Statute		
		<input type="checkbox"/> 583 Other Statute		
		<input type="checkbox"/> 584 Other Statute		
		<input type="checkbox"/> 585 Other Statute		
		<input type="checkbox"/> 586 Other Statute		
		<input type="checkbox"/> 587 Other Statute		
		<input type="checkbox"/> 588 Other Statute		
		<input type="checkbox"/> 589 Other Statute		
		<input type="checkbox"/> 590 Other Statute		
		<input type="checkbox"/> 591 Other Statute		
		<input type="checkbox"/> 592 Other Statute		
		<input type="checkbox"/> 593 Other Statute		
		<input type="checkbox"/> 594 Other Statute		
		<input type="checkbox"/> 595 Other Statute		
		<input type="checkbox"/> 596 Other Statute		
		<input type="checkbox"/> 597 Other Statute		
		<input type="checkbox"/> 598 Other Statute		
		<input type="checkbox"/> 599 Other Statute		
		<input type="checkbox"/> 600 Other Statute		
		<input type="checkbox"/> 601 Other Statute		
		<input type="checkbox"/> 602 Other Statute		
		<input type="checkbox"/> 603 Other Statute		
		<input type="checkbox"/> 604 Other Statute		
		<input type="checkbox"/> 605 Other Statute		
		<input type="checkbox"/> 606 Other Statute		
		<input type="checkbox"/> 607 Other Statute		
		<input type="checkbox"/> 608 Other Statute		
		<input type="checkbox"/> 609 Other Statute		
		<input type="checkbox"/> 610 Other Statute		
		<input type="checkbox"/> 611 Other Statute		
		<input type="checkbox"/> 612 Other Statute		
		<input type="checkbox"/> 613 Other Statute		
		<input type="checkbox"/> 614 Other Statute		
		<input type="checkbox"/> 615 Other Statute		
		<input type="checkbox"/> 616 Other Statute		
		<input type="checkbox"/> 617 Other Statute		
		<input type="checkbox"/> 618 Other Statute		
		<input type="checkbox"/> 619 Other Statute		
		<input type="checkbox"/> 620 Other Statute		
		<input type="checkbox"/> 621 Other Statute		
		<input type="checkbox"/> 622 Other Statute		
		<input type="checkbox"/> 623 Other Statute		
		<input type="checkbox"/> 624 Other Statute		
		<input type="checkbox"/> 625 Other Statute		
		<input type="checkbox"/> 626 Other Statute		
		<input type="checkbox"/> 627 Other Statute		
		<input type="checkbox"/> 628 Other Statute		
		<input type="checkbox"/> 629 Other Statute		
		<input type="checkbox"/> 630 Other Statute		
		<input type="checkbox"/> 631 Other Statute		
		<input type="checkbox"/> 632 Other Statute		
		<input type="checkbox"/> 633 Other Statute		
		<input type="checkbox"/> 634 Other Statute		
		<input type="checkbox"/> 635 Other Statute		
		<input type="checkbox"/> 636 Other Statute		
		<input type="checkbox"/> 637 Other Statute		
		<input type="checkbox"/> 638 Other Statute		
		<input type="checkbox"/> 639 Other Statute		
		<input type="checkbox"/> 640 Other Statute		
		<input type="checkbox"/> 641 Other Statute		
		<input type="checkbox"/> 642 Other Statute		
		<input type="checkbox"/> 643 Other Statute		
		<input type="checkbox"/> 644 Other Statute		
		<input type="checkbox"/> 645 Other Statute		
		<input type="checkbox"/> 646 Other Statute		
		<input type="checkbox"/> 647 Other Statute		
		<input type="checkbox"/> 648 Other Statute		
		<input type="checkbox"/> 649 Other Statute		
		<input type="checkbox"/> 650 Other Statute		
		<input type="checkbox"/> 651 Other Statute		
		<input type="checkbox"/> 652 Other Statute		
		<input type="checkbox"/> 653 Other Statute		
		<input type="checkbox"/> 654 Other Statute		
		<input type="checkbox"/> 655 Other Statute		
		<input type="checkbox"/> 656 Other Statute		
		<input type="checkbox"/> 657 Other Statute		
		<input type="checkbox"/> 658 Other Statute		
		<input type="checkbox"/> 659 Other Statute		
		<input type="checkbox"/> 660 Other Statute		
		<input type="checkbox"/> 661 Other Statute		
		<input type="checkbox"/> 662 Other Statute		
		<input type="checkbox"/> 663 Other Statute		

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within-district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

COPY